

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

RONALD MARK HOLLOWAY	§	
v.	§	CIVIL ACTION NO. 6:96cv144
DIRECTOR, TDCJ-CID	§	

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND DENYING PETITIONER'S MOTION FOR RELIEF FROM JUDGMENT

The Petitioner Ronald Holloway, proceeding *pro se*, filed this application for the writ of habeas corpus under 28 U.S.C. §2254 complaining of the legality of his confinement. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

The petition was dismissed on May 29, 1996. Holloway did not take a timely appeal; instead, on June 5, 2006, over ten years later, Holloway filed a notice of appeal, together with a motion to reopen the time for filing a notice of appeal, a motion to vacate the judgment (including an assertion that he was proceeding in an independent action), and a request for a certificate of probable cause.¹

After review of Holloway's motions, the Magistrate Judge issued a Report on June 30, 2006, recommending that relief be denied. The Magistrate Judge noted that Holloway had filed another habeas corpus petition shortly before he filed the present one, which he unsuccessfully sought to consolidate with the present case. Holloway did appeal the dismissal of the other petition,

¹The appeal taken by Holloway with this notice of appeal was dismissed by the Fifth Circuit on August 8, 2006.

although he did not appeal the dismissal of the present one, and his appeal was dismissed. In 1999, Holloway sought leave to file a third habeas corpus petition, which leave was denied by the Fifth Circuit.

The Magistrate Judge observed that at the time that Holloway appealed the dismissal of his first habeas petition, his second one had already been dismissed; thus, he could have complained in that appeal of the denial of consolidation of the petitions. The Magistrate Judge then discussed the legal standards applicable to independent actions under Rule 60(b) and concluded that Holloway did not meet these criteria. Finally, the Magistrate Judge determined that Holloway had shown no valid basis for an extension of time in which to appeal or for the issuance of a certificate of appealability (formerly known as a certificate of probable cause).

Holloway filed objections to the Magistrate Judge's Report on August 11, 2006. In his objections, Holloway complains of the delay in receiving a copy of the Magistrate Judge's Report. The docket sheet shows that after the Report was entered, Holloway was moved from the Clements Unit to the Hughes Unit, possibly accounting for the delay in his receipt of the Report. More pertinently, Holloway offers no specific objections to the Magistrate Judge's proposed findings or conclusions; instead, he says only that "Holloway wishes to answer and object to your Report and Recommendation signed June 30, 2006."

The Court has conducted a careful *de novo* review of the pleadings in this cause, including the Petitioner's motions for extension of time in which to appeal, a certificate of appealability, and for relief from judgment and an independent action, the Report of the Magistrate Judge, the Petitioner's objections thereto, and all pleadings, documents, and records in the case. Upon such *de novo* review, the Court has concluded that the Report of the Magistrate Judge is correct and that the objections of the Petitioner are without merit. It is accordingly

ORDERED that the Petitioner's objections are overruled and that the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the Petitioner's motions for extension of time in which to appeal, for a certificate of appealability, and for relief from judgment and an independent action are hereby DENIED.

So ORDERED and SIGNED this 25th day of August, 2006.

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

LEONARD DAVIS
UNITED STATES DISTRICT JUDGE